

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:) Chapter 11
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
Debtor.)

**TRUSTEE'S OBJECTION TO CLAIM 469 FILED BY GIBSON FARMS, LLC AND
NOTICE OF RESPONSE DEADLINE**

James A. Knauer, the chapter 11 trustee appointed in this case ("Trustee"), pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), hereby objects (this "Objection") to claim 469 (the "Claim")¹ filed by Gibson Farms, LLC ("Gibson Farms"). The Trustee requests that the Court enter an order denying and expunging the Claim in its entirety and/or subordinating the Claim to the claims of general unsecured creditors pursuant to 11 U.S.C. §§ 509(c) and/or 510(c). In support of this Objection, the Trustee respectfully states:

Jurisdiction

1. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B). Venue of this proceeding and this Objection is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory bases for the relief requested herein are 11 U.S.C. §§ 502, 506 and 507 and Rules 3001 and 3007 of the Bankruptcy Rules.

Background

3. On December 6, 2010 (the "Petition Date"), an involuntary chapter 11

¹ All references herein to the claim number are to the number assigned to the Claim by BMC (see paragraph 5 below) and not to the number, if any, assigned to the Claim by the Court's online claims register. For further explanation, see paragraph 5 below.

bankruptcy petition was filed to commence a chapter 11 case (the "Chapter 11 Case") against Eastern Livestock Co., LLC ("Debtor") in the United States Bankruptcy Court for the Southern District of Indiana, New Albany Division (the "Court").

4. On December 27, 2010, the Court entered an order approving the appointment of the Trustee and on December 28, 2010, entered an order for relief.

5. On March 17, 2011, the Court entered an order approving The BMC Group, Inc. ("BMC") as the Trustee's claims and noticing agent in the Chapter 11 Case. Pursuant to that order, BMC was authorized and directed to, among other things, maintain the official claims register ("Claims Register") for all filed proofs of claim in the Chapter 11 Case. A copy of that Claims Register and all filed proofs of claim in the Chapter 11 Case can be viewed at <http://www.bmcgroup.com/restructuring/Claims.aspx?ClientID=271>.

6. The Court entered an order confirming the *Trustee's First Amended Chapter 11 Plan of Liquidation* [Dock. No. 1490] (the "Plan") on December 17, 2012, and the Plan became effective on December 20, 2012. *See* Dock. No. 1675.

7. Pursuant to the Plan, the deadline for claim objections is April 19, 2013.

Request for Relief

8. By this Objection, the Trustee seeks entry of an order denying and expunging the Claim in its entirety.

9. The Claim asserts an unsecured claim in an unknown amount. The only documentation attached to the Claim is a copy of a complaint filed by Fifth Third Bank in the Court of Common Pleas, Hamilton County, Ohio. That complaint names Gibson Farms as a defendant.

10. The fact that Gibson Farms is named as a defendant in a separate cause of

action does not create a claim against Debtor.

11. In addition, and to the extent Gibson Farms asserts a valid claim against Debtor, the Claim should be subordinated to the claims of general unsecured creditors pursuant to 11 U.S.C. § 509(c). 11 U.S.C. § 509(c) provides:

The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under this title or otherwise.

12. The Claim is apparently asserted as a co-debtor of Debtor on obligations to Fifth Third Bank. Because Fifth Third Bank has not and will not be paid in full, the Claim should be subordinated to Fifth Third Bank's unsecured deficiency claim.

13. Upon information and belief, Thomas P. Gibson possesses an ownership interest in Gibson Farms. Thomas P. Gibson should not be allowed to benefit from his fraud upon the Debtor. Accordingly, the Claim should be subordinated to the claims of general unsecured creditors pursuant to 11 U.S.C. § 510(c).

14. The Trustee objects to the Claim and requests that the Claim be disallowed and expunged in its entirety.

Notice of Response Deadline

11. If Gibson Farms wishes to contest the relief requested in this Objection, Gibson Farms must file a response with the Court within thirty (30) days of the service of this Objection ("Response Deadline"). Responses must be filed with the Clerk of the United States Bankruptcy Court, Southern District of Indiana, New Albany Division, 110 U.S. Courthouse, 121 West Spring Street, New Albany, IN 47150 no later than 4:30 p.m. EDT on the Response Deadline and served on Trustee's Counsel, Faegre Baker Daniels LLP, 300 N. Meridian Street,

Suite 2700, Indianapolis, IN 46204 (Attn: Dustin DeNeal). **IF NO RESPONSE IS FILED BY THE RESPONSE DEADLINE THE COURT MAY SUSTAIN THE OBJECTION TO THE CLAIM WITHOUT FURTHER NOTICE OR HEARING.**

WHEREFORE, the Trustee respectfully requests that the Court enter an Order disallowing and expunging the Claim in its entirety and granting the Trustee all other just and appropriate relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Dustin R. DeNeal

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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on April 19, 2013, a copy of the foregoing pleading was mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

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